

## REMARKS/ARGUMENTS

By this paper, Applicant replies to the Office Action of December 9, 2008 and respectfully requests reconsideration of the application.

Claims 1-33 are now pending. Claims 1 and 18 are independent.

### I. The Amendments May be Entered Under Rule 116

The amendments to claims 4 and 20 correct the typographical error noted in the Office Action, reduce the issues for appeal, and raise no new issues for search. Accordingly, the amendment may be entered.

### II. Claim 1 and the Combination of Peterffy '804 with Konia '151

Paragraph 7 of the Action compares claim 1 to the combination of Peterffy '804 with Konia '151. Claim 1 recites as follows:

1. A method for operating an electronic trading system for the exchange of financial instruments, the method comprising:
  - providing a trading stack;
  - receiving a dynamic price improvement order, in which the dynamic price improvement order is associated with a trade for a financial instrument traded on the electronic trading system, in which the dynamic price improvement order indicates that the electronic trading system should maintain a **priority of the dynamic price improvement order** by adjusting a first price associated with the dynamic price improvement order to a level that is at least as good as at least one second price associated with at least one second order, and in which the priority includes a priority used by the electronic trading system for determining matches with contra orders;
  - receiving the at least one second order;
  - determining a price improvement level to assign to the dynamic price improvement order so that the priority of the dynamic price improvement order is maintained, and in which the price improvement level corresponds to an amount of change to the first price; and
  - assigning the price improvement level to the dynamic price improvement order.

The December 2008 Action compares an imprecise paraphrase of the claim language to the “priority” that is auctioned in the Konia '151 reference. The mismatch between the claim and the reference comes forth when the claim language is considered under its ordinary meaning.

The claim uses the language “priority of the ... order.” “Order priority” is a property of an order within a trading system, that determines the sequence in which orders are matched to

counterorders. For example, orders with better prices (higher bids to buy or lower offers to sell), earlier in time, higher in quantity, etc. (as defined by trading rules of the particular trading system or exchange) have higher “order priority” than orders lacking these attributes, and will be matched earlier in time. “Order priority” relates to the matching within the system. An order with higher priority has a great advantage if the market price for the commodity being sold through the system changes rapidly. “Order priority” is unrelated to the sequence in which services are performed outside the trading system – for example, the sequence of settlement of trades is not directly affected by order priority. This art-recognized definition of a term of art is shown in the Baron’s Dictionary definition, provided as an Exhibit to this Reply.

In contrast, the “priority” in Konia ’151 is not “order priority” as recited in claim 1. Rather, Konia ’151 makes clear that “priority” refers to priority of a service to be performed outside the system, and that priority is the commodity being sold through Konia’s system. Konia ’151 at col. 3, lines 53-56 and 62-64, teaches that the “priority” being sold through his system is the “ranking of hypertext links to web pages in search results. ... The web pages of bidders that bid higher ... are ranked higher on the search results,” or, priority for golf tee time (Konia ’151, col. 6, lines 48-50). Konia’s “priority” relates to something outside the system. The “priority” in Konia ’151 does not determine the sequence in which a bid or offer is accepted to form a transaction, but rather the “priority” of a service that exists outside Konia’s system

Because claim 1 recites adjusting a price to affect “a priority of the ... order,” and that element is not found in any of the references, the rejection may be withdrawn. The other independent claim, claim 18, likewise relates to “order priority” within a trading system, not priority of a service.

The undersigned attorney notes with some appreciation that this Office Action appears to have been prepared with some care and thought. Those two qualities have been lacking from almost all Office papers originating in T.C. 3600 received by this attorney in the last year or so. Though the Action is not correct on the jargon of the art, at least the Examiner exerted some care to comply with procedure. This attorney thanks the Examiner for a bright spot in an otherwise desolate landscape.

### **III. Dependent claim**

The dependent claims are patentable with the independent claims discussed above. In addition, the dependent claims recite additional features that further distinguish the art.

### **IV. Conclusion**

Applicant hereby authorizes the USPTO to communicate with any authorized representative concerning this application by electronic mail.

In view of the amendments and remarks, Applicant respectfully submits that the claims are in condition for allowance. Applicant requests that the application be passed to issue in due course. The Examiner is urged to telephone Applicant's undersigned counsel at the number noted below if it will advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance. In the event that any extension of time is required, Applicant petitions for that extension of time required to make this reply timely. Kindly charge any additional fee, or credit any surplus, to Deposit Account No. 50-3938, Order No. 03-1083.

Respectfully submitted,  
BGC PARTNERS, INC.

Dated: March 9, 2009

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